

ST 04-3

Tax Type: Sales Tax

Issue: Exemption From Tax (Charitable or Other Exempt Types)

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

THE DEPARTMENT OF REVENUE)	No. 03 ST 0000
OF THE STATE OF ILLINOIS)	ITB 0000-0000
)	
v.)	Exemption Number Denial
)	
ABC LEAGUE)	Mimi Brin
Applicant)	Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

Appearances: A. Thomas Skallas of Childress & Zdeb on behalf of ABC League; Shepard K. Smith, Special Assistant Attorney General on behalf of the Illinois Department of Revenue

Synopsis:

ABC League (hereinafter the “Applicant” or the “League”) sought an exemption from the application of tax under the Illinois Retailer’s Occupation Tax Act (35 ILCS 120/1 *et seq.*) (hereinafter the “ROTA” or the “ROT”) and the Illinois Use Tax Act (35 ILCS 105/1 *et seq.*) (hereinafter the “UTA” or the “UT”) as an entity organized and operated exclusively for charitable purposes. 35 ILCS 120/2-5; 105/3-5 The Department denied applicant’s request and it timely protested and requested a hearing on the issue. A hearing was held whereat oral and documentary evidence was received. Following the submission of all evidence and a review of the record, it is recommended

that this matter be resolved in favor of the Department and the following Findings of Fact and Conclusions of Law are made in support of this recommendation:

Findings of Fact:

1. The ABC League requested an exemption identification number (35 ILCS 120/1g) from the Department on the basis that it was exempt from taxes imposed by the ROTA and the UTA as an entity organized and operated exclusively for charitable purposes. Department Ex. No. 1 (Second Denial of Sales Tax Exemption) The Department denied the request. Id.
2. The League is incorporated, as of May 1998, in the State of Illinois under the General Not For Profit Corporation Act of Illinois. Applicant Ex. No. 1
3. Applicant is exempt from the imposition of federal income tax under section 501 (c) (3) of the Internal Revenue Code. Applicant Gr. Ex. No. 3 (August 12, 2003 IRS letter)
4. Applicant's by-laws provide, *inter alia*, that it is organized "exclusively for charitable purposes". Applicant Ex. No. 2, art. II
5. Regular voting membership is open to "all persons of ABC birth, ancestry, connubial relationship or philo-ABC who subscribe to the aims and purposes of the ABC League... ." Id. at art. III
6. Members must make application therefor and must be confirmed by Board approval "by a majority of those present". Id.
7. Applicant assesses dues on its membership. Id. There is no provision in the by-laws for the waiver of membership dues.

8. Applicant's main fundraising vehicle is a cotillion, held biennially (Tr. pp. 23-26) whereat debutantes and escorts are presented. Tr. p. 25
9. The League invites specific women and men to be presented as debutantes and escorts (Tr. pp. 32, 41, 43-44, 45) and charges each a fee for the honor. Tr. pp. 43-44 For the first year of the cotillion, 1998, the debutante fee paid by each girl was \$1,250 (Tr. 44). Attendance at the cotillion dinner requires the purchase of a ticket for admission, with the ticket price in 1998 being \$125 and the price in 2002 being \$150. Tr. pp. 32-33
10. An ad book is also produced for the cotillion, and applicant collects monies for the ads placed. Tr. p. 44
11. The debutantes and escorts participate in various activities associated with applicant during and following the year of their being presented as such. Tr. pp. 16-17, 37, 45
12. The League also holds a fashion show as a fundraiser, with the debutantes modeling clothes. Tr. p. 37
13. The League has "one girl" who researches and recommends charities to the Board (Tr. p. 35), with the by-laws providing that the Charity Committee chairman is responsible for researching and recommending charities to the Board. Applicant Ex. No. 2, art. VIII

Conclusions of Law:

The UTA and the ROTA both provide for exemption from the imposition of the respective taxes on the gross receipts from the sale of tangible personal property to

entities “organized and operated exclusively for charitable, religious, or educational purposes... .” 35 ILCS 105/3-5 (4); 120/2-5 (11) The League requested an exemption number pursuant to these provisions, which the Department denied on the basis that the League did not demonstrate that it operated for exclusively charitable purposes.

The well-settled law in Illinois regarding taxation exemption is that a statute granting exemption must be strictly construed in favor of taxation and against exemption. Wyndemere Retirement Community v. Department of Revenue, 274 Ill. App.3d 455, 459 (2nd Dist. 1995) Further, the exemption claimant has the burden of proving its entitlement clearly and conclusively (id.) with all facts construed and debatable questions resolved in favor of taxation. Id.

Although it was a case concerning a property tax exemption, Illinois courts have used guidelines set forth in Methodist Old Peoples Home v. Korzen, 39 Ill.2d 149 (1968) in determining whether an entity qualifies as one organized and operated for charitable purposes. Wyndemere Retirement Community v. Department of Revenue, supra; Friends of Israel Defense Forces v. Department of Revenue, 315 Ill. App.3d 298, 303-04 (2000) These guidelines are that the entity: (1) has no capital, capital stock or shareholders; (2) earns no profit or dividends, but rather derives its funds mainly from public and private charity and holds them in trust for the objects and purposes expressed in its charter; (3) dispenses charity to all who need and apply for it; (4) does not provide gain or profit in a private sense to any person connected with it; and (5) does not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses. Methodist Old Peoples Home v. Korzen, supra at 156-57

Also, the term “exclusive” means the primary, and not incidental or secondary purpose. Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430, 436 (1st Dist. 1987) In addition, while there may be restrictions on a group benefited by the entity’s charity, “the service rendered to those eligible must act to relieve the public of an obligation, moral or economic, which it would otherwise have to such beneficiaries or it must confer some general benefit onto the public.” Id. at 435 Finally, it is not enough that the entity’s organizational documents profess charitable purpose. Instead, an analysis of applicant’s activities is necessary to determine whether it actually is a charitable institution. Wyndemere Retirement Community v. Department of Revenue, supra at 460; Morton Temple Association v. Department of Revenue, 158 Ill. App.3d 794, 796 (3rd Dist. 1987)

It is acknowledged that the Methodist Old People Home guidelines are not be applied mechanically or technically. DuPage County Board of Review v. Joint Comm’n on Accreditation of Healthcare Organizations, 274 Ill. App.3d 461, 466 (2nd Dist. 1995) Rather, they are to be balanced with an overall focus on whether, and to what extent, applicant primarily serves non-exempt interests, such as those of its own dues-paying members (Rogers Park Post No. 108 v. Brenza, 8 Ill.2d 286 (1956); Morton Temple Association v. Department of Revenue, supra) or operates primarily in the public interest and lessens the State’s burden. DuPage County Board of Review v. Joint Comm’n on Accreditation of Healthcare Organizations, supra.

In the instant matter, there is no question that the applicant has no capital, capital stock or shareholders. Nor is there a dispute that applicant does not provide gain or profit

in a private sense to any person connected with it. However, applicant fails to satisfy a number of the other guidelines.

First, applicant is membership based and operates through its membership. Members pay dues, and must be approved by a majority of the Board voting. There is no evidence of the waiver of membership dues for those unable to pay. Although debutantes and escorts are members, their status and, therefore, their membership, is restricted to only those that the League selects to be debutantes and escorts. Then, these people are required to pay monies to the applicant for the privilege of their status, and while the fee required of an escort may be “nominal”¹, such is not the case for a debutante. Membership, then, is not available to all who might otherwise qualify by ABC birth, ancestry, connubial relationship or love of things ABC.

The benefits of membership are social. The organization was started by a group of women intending to do charity. Tr. pp. 22, 31 The evidence provides that while there is a full compliment of officers (Applicant Ex. No. 2, art. VII), a governing Board (id. at art. VI) and standing committees (id. at art. VIII), the organization activities center around the cotillion affair, a small fashion show fundraiser whereat the debutantes serve as models, and the activities, meetings and social gatherings of the Junior Auxiliary (id. at art. VIII, sec. 11)² As discussed above, membership is based upon the payment of dues or monies to be a debutante or an escort, and there are no provisions for waiver of these. Therefore, the overriding benefit of membership, that being social interaction with

¹ Jane Doe, applicant’s president, testified that escorts pay a “nominal” amount for their position. “It just covers their dinner for the evening.” Tr. p. 45

² The debutantes have on-going activities throughout the year that they are debutantes, and together with their escorts, form a peer group for activities. Tr. pp. 44-45 Whereas the debutantes and escorts are members of the League (Applicant Ex. No. 2, art. III) based upon this status, it is unclear who are the members of the Junior Auxiliary.

persons of like heritage or cultural interest, is available only to those selected and able to pay.

Nor does applicant permit persons to enjoy the benefits of its activities without cost. Its main fundraiser and principle activity appears to be the biennial cotillion, from which it derives the vast majority of the money it dispenses. However, a cotillion debutante must pay for that privilege, as does each escort. Also, admission to the cotillion affair, which includes dinner, is through payment for a ticket. There is no evidence that the ticket price is nominal, is set below applicant's cost or can be waived. Failure to pay whichever cost is applicable bars participation.

Applicant's federal tax returns support a determination that the sources of its funds are from membership dues, fees and tickets sales. The League reported in 1998 that it received \$30,000 from direct public support,³ and \$117,615 from other revenue. Applicant Ex. No. 4 (1998 IRS form 990 Return of Organization Exempt From Income Tax) The testimony is that there were 900 people who attended the cotillion that year with tickets priced at \$125, and that each of the 20 debutantes paid \$1,250. Thus, approximately 21% of the revenues resulted from debutante fees.⁴ Even assuming that the debutantes did not have to additionally pay for dinner tickets, the revenue from the cotillion comprised about 74% of the revenues.⁵ The subsequent cotillion years, 2000 and 2002, show an overwhelming source of applicant's income from the cotillion affair. Applicant Exs. No. 6 (2000 IRS form 990), 8 (2002 IRS form 990).⁶ Thus, I conclude

³ The source of this money is not specifically identified in the record.

⁴ $\$1250 \times 20 = \$25,000 / \$117,615 = 21\%$ (approximation)

⁵ $\$125 \times 900 = \$112,500 - \$25,000 = \$87,500 / \$117,615 = 74\%$ (approximation)

⁶ In the intervening years, 1999 and 2001, applicant had a fall fashion show fundraiser, and, absent any financial specifics relating to those events, it is reasonable to conclude that the gross revenues result from monies received therefrom.

from the evidence of record, that applicant's funds are generated by membership dues, fees and ticket sales, and not from public and private charity as delineated under Methodist Old People's Home v. Korzen, *supra*

There is no question that the League extends charity, however, it self-limits its charity, with the limitations not necessarily based upon available funds. While it is understandable that applicant would be concerned about its fiscal health in the first year of its operation, 1998 (Tr. p. 24), it gave away only \$5,000 in 1999 and had a year-end balance of \$33,168. In fact, according to its IRS form 990, in each year since its incorporation, applicant has had a significant, positive year-end balance. (\$23,143 (1998) (Applicant Ex. No. 4); \$33,168 (1999) (Applicant Ex. No. 5); \$13,868 (2000) (Applicant Ex. No. 6); \$16,334 (2001) (Applicant Ex. No. 7); \$23,178 (2002) (Applicant Ex. No. 8))

Also, applicant does not advertise that it has monies available for philanthropy. Instead, information about entities to whom applicant might give funds is provided by "one girl" who researches "different charities and come [sic] forward and give an explanation as to why—what they're all about." Tr. p. 35 The Charity Committee chairman is responsible for researching and recommending charities to the Board. Applicant Ex. No. 2, art. VIII, sec. 10 From this, it seems that the burden remains on an entity seeking funds to identify itself to the applicant.

Applicant, by not making it known that it provides charity, certainly limits the charity it does extend. Methodist Old People's Home v. Korzen, *supra*; see also Highland Park Hospital v. Department of Revenue, 155 Ill. App.3d 272 (2nd Dist. 1987) (those who might benefit from free care offered by hospital not made aware of hospital charity). This, in addition to the fact that the self-limiting philanthropy is not connected

with its financial ability to extend charity, causes me to conclude that applicant places obstacles in the way of those who need and would avail themselves of the charitable benefits it dispenses, and that it does not dispense charity to all who need and apply for it.

Methodist Old People's Home v. Korzen, supra

I do not doubt that applicant was organized for the purpose of raising money to help others. But, grants of tax exemption are not based upon good intentions and distribution of some funds, because each grant of exemption deprives the entire community and the State of funds needed to provide necessary services to everyone. Thus, as discussed above, tax exemption is the exception and not the rule, and statutes providing exemptions must be strictly construed in favor of taxation. This applicant has failed to clearly prove that it is organized and operated "exclusively" for charitable purposes. Rather, it is an organization that functions primarily for social purposes, limited to those who can pay to participate.

WHEREFORE, for the reasons stated above, I recommend that the Department's denial of a tax exemption identification number to the ABC League be affirmed.

Date: 1/12/04

Mimi Brin
Administrative Law Judge